

REMARKS

Claims 48, 49, 52-77 and 79 are pending in the application. By this Amendment, claims 48, 73 and 79 are amended to further recite the nature of Applicant's invention.

No new matter is added by this Amendment. Support for the amendments to the claims may be found in the filed patent application in paragraphs 0023, 0041, 0046, and in the drawings, for example, with reference to the published patent application 2002/0116331.

Reconsideration and allowance in view of the following remarks are respectfully requested.

A. The 35 U.S.C. 102 Rejection

In the Office Action, claims 48, 49, 52-77 and 79 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al. (hereinafter Johnson) U.S. Patent 6,999,943. This rejection is traversed.¹

Claim 48 recites in particular:

identifying, automatically without human involvement, a payee account based on the payee information;

performing, after identifying the single payment source and the payee account, an **optimization determination** to determine a payment mechanism to use to transfer the funds from the single payment source to the payee account, the processor using the first information and payment platform information in the optimization determination, **the optimization determination performed automatically without human involvement**; and

(emphasis added)

¹ As Applicant's remarks with respect to the rejections in the Office Action are sufficient to overcome such rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

Applicant respectfully submits that Johnson fails to teach or suggest such claimed features.

Under 35 U.S.C. §102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. *In re Sun*, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. *Id.* “A prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, **every limitation of the claim.**” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). “The **identical invention** must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989). “Absence from the reference of **any** claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

Applicant notes the “Response to Arguments” comments on pages 2-4 of the Office Action. In particular, Applicant notes the comments on page 2, lines 13-21:

... First, Examiner notes that the term **automatically is not in Applicant's claim. Applicant is equating automatically as being done by a processor** and therefore this is how it is interpreted by the Examiner. As noted before, Johnson teaches that a processor can identify a single payment source based on payment source information (column 13, lines 19-20 and column 14, lines 5-9; **Examiner notes that the user enters multiple payment method/source, such as credit card or checking account and the transaction evaluator selects a single payment source**). Johnson teaches that the identified single payment source could be a checking account (column 17, line 65 thru column 18, line 14). Johnson also teaches a second optimization that determines a payment mechanism after the payment source. ...

(emphasis added)

As set forth above, independent claim 48, as well as independent claims 73 and 79, are amended to further recite the “automatic” nature of Applicant’s invention. That is, the Office Action, in support of the 35 U.S.C. 102 rejection, sets forth that “Examiner notes that the user

enters multiple payment method/source, such as credit card or checking account and the transaction evaluator selects a single payment source). Since Applicant's claim amendments preclude such interpretation, Applicant submits that the claims further distinguish over the teachings of Johnson. In particular, Applicant submits that the amendments preclude the interpretation of the Office Action, as set forth above, which is reliant on user interaction.

Applicant acknowledges that Johnson does indeed teach of different channels including ACH transaction or debit card transaction. However, the use of one of ACH transaction or debit card transaction or alternate channel does not implicate that the Johnson system performs a "determination" as to which (ACH transaction or debit card transaction or alternate channel) to use. Rather, in the processing it may well be the case that the system simply is advised, based on data associated with the transaction, which method to use.

For example the disclosure of Johnson in column 19, lines 21-52, as referenced in the Office Action (see pending Office Action on page 3, lines 1-6), sets forth little more than boilerplate computer language. Such disclosure of Johnson does describe that the transaction evaluators might be automated. However, Applicant submits that to take such general assertion of Johnson, and conclude that the "channel determination" is automated, extends beyond a fair interpretation of Johnson's teachings. The referenced Figs. 2 and 3 are seen to be no more relevant. That is, in Fig. 3 for example, after the payment method is selected in step 350, all that is described is the notification of step 360 and the "process transaction with selected issuer" of step 370. Such steps 350 and 370 clearly fail to support the conclusion in the Office Action - that the determination of channel can be performed automatically.

For at least the reasons set forth above, Applicant respectfully submits that Johnson fails to teach or suggest each and every feature as recited in claim 48. It is respectfully submitted that

claim 48 is allowable at least for the reasons set forth above.

Further, independent claims 73 and 79 recite patentable subject matter at least for reasons similar to those set forth above with respect to claim 48.

The dependent claims recite patentable subject matter based on their dependencies on the respective independent claims, as well as for the additional features such dependent claims recite.

Withdrawal of the 35 U.S.C. §102 rejection is respectfully requested.

B. Conclusion

For at least the reasons outlined above, Applicant respectfully asserts that the application is in condition for allowance. Favorable reconsideration and allowance of the claims are respectfully solicited.

It is believed that no fee is due in connection with this filing. However, if it is determined otherwise, the Commissioner is hereby authorized to charge our Deposit Account No. 50-0206.

Respectfully submitted,

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